THE HON'BLE MR JUSTICE J.CHELAMESWAR

And

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 23960 of 2005

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DATED: 16.11.2005

Between:

D. Kishore Kumar

… PETITIONER.

AND

The Engineer-in-Chief (Admn. Wing),

Irrigation & CAD Department,

Hyderabad & 3 others.

… RESPONDENTS.

THE HON'BLE MR JUSTICE J.CHELAMESWAR

And

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

ORDER: **(PER THE HONOURABLE JC,J)**

The unsuccessful applicant in O.A.No.3169 of 2005 on the file of Andhra Pradesh Administrative Tribunal, filed the present writ petition with a prayer as follows:

> ".....Hon'ble Court may be pleased to issue a writ, order or direction more in the nature of writ of Certiorari, calling for the records relating to and in connection with the orders passed by the Hon'ble A.P. Administrative Tribunal in O.A.No.3169 of 2005, dated 06.10.2005 and to quash the same and consequentially to set aside the orders issued by the 2nd respondent in his proceedings No.CE/NC/VSP/166 M, dated 30.06.2005 and to direct the respondents to continue the applicant at Irrigation Circle, Bobbili and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

The O.A. itself came to be filed challenging the proceedings of the 2nd respondent herein, dated 30.06.2005, by which the present writ petitioner was transferred from Irrigation Circle, Bobbili to Irrigation Circle, Visakhapatnam. The petitioner is an Assistant Engineer working in the State of A.P. in the Irrigation Department. Initially when the petitioner approached the Tribunal by way of O.A.No.3169 of 2005, which was disposed of by the Administrative Tribunal holding that the order of transfer is an appealable order under Rule 26 of A.P. State and Subordinate Service Rules. Though there was a dispute as to whether an order of transfer was appealable order falling with the scope of the abovementioned rule, the Tribunal without any discussion, disposed of the O.A.

Aggrieved by the same, the petitioner earlier approached this Court by filing WP.No.14887 of 2005. The said writ petition was allowed remitting the matter to the Tribunal to examine the specific contention whether an order of transfer is an appealable order within the scope of the abovementioned rule. The Tribunal by the present impugned order came to the conclusion that the order of transfer is an appealable order falling within the scope of the abovementioned Rule 26. The Tribunal placed reliance on the judgment of the Hon'ble Supreme Court in ***STATE OF U.P. AND ANOTHER v. SIYA RAM AND ANOTHER*** for reaching such a conclusion. The Supreme Court considered in the said case the legality of the transfer of an Executive Engineer, working with the Irrigation Department of the Government of A.P., who was transferred from Ghazipur to Faizabad. The Allahabad

High Court quashed the said order of transfer holding that as punitive in nature. It further examined the question whether such a transfer was in the interest of public service. The Supreme Court on an appeal reversed the decision of the Allahabad High Court. In the process of examination of the said issue and passing observation, the Supreme Court observed that "*transfer is not only an incident, but a condition of service*" without there being any specific issue in the Supreme Court in this regard.

On the other hand, the Supreme Court in ***B. VARADHA RAO v. STATE OF KARNATAKA AND OTHERS*** specifically examined the issue. The matter arose in the context of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957. There was a divergence of the opinion in the Karnataka High Court on a question as to whether transfer is a condition of service or incident of service. The Supreme Court held as follows:

> "We agree with the view expressed by the learned Judges that transfer is always understood and construed as an incident of service. The words 'or other conditions of words 'denies or varies to his disadvantage his pay, allowances, pension' in r.19(1)(a) must be construed ejusdem generis. Any alteration in the conditions of service must result in prejudice to the government servant and some disadvantage touching his pay, allowances, pension, seniority, promotion, leave, etc. It is well understood that transfer of a Government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. That a Government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of Government service and no Government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post. As the learned Judges rightly observe:
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> "The norms enunciated by Government for the guidance of its officers in the mater of regulating transfers are more in the nature of guidelines to the officers who order transfers in the exigencies of administration than vesting of any immunity from transfer in the Government servants."

Therefore, we are of the opinion that the impugned order of the Tribunal insofar as it held that a transfer is a condition of service and therefore appealable under Rule 26 of the A.P. State and Subordinate Service Rules is clearly wrong.

Apart from the above question, the Tribunal also considered the other submission made by the petitioner that the transfer was in contravention of G.O.Ms.No.144, dated 07.06.2005, the Tribunal came to the conclusion that there was no violation of the provisions of G.O.Ms.No.144, dated 07.06.2005.

The G.O.Ms.No.144, in our view only contains certain administrative guidelines in the matter of transfers of the employees of the State Government, and they do not confer any enforceable rights in favour of the employees. In such circumstances, we do not see any reason to interfere with the order of the Tribunal.

Apart from all the exposition of law which the petitioner resorted to, the fact remains that the petitioner was transferred to a distance of less than about 100 kilo meters that too from a small town to a major city of Andhra Pradesh. Therefore, we see no merits in the writ petition and the same is dismissed at the admission stage. No order as to costs.

J.CHELAMESWAR, J

Date: 16.11.2005

RAMESH RANGANATHAN, J

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